

CLEAN CLOSED IMPOUNDMENT REGULATIONS UNDER THE CCR RULE

The 2015 Final Rule on Disposal of Coal Combustion Residuals from Electric Utilities¹ established requirements for inactive CCR surface impoundments, i.e., those units that did not receive CCR after October 15, 2015, but still contained water and CCR.

Under the rule as promulgated in 2015, inactive CCR surface impoundments must comply with the same requirements as existing CCR surface impoundments, unless the owner or operator of the facility closed the units no later than April 17, 2018.² Closure was established by actions specified in section 257.100 of the CCR Rule.

If an inactive CCR surface impoundment had completely closed by no later than April 17, 2018, then no other requirements applied to that unit (i.e., the “early closure” provisions). The effect of these “early closure” provisions was that no groundwater monitoring or other post-closure care requirements (such as the requirement to take corrective action for any releases) would apply to these units.

For entities that sought to avail themselves of this early closure incentive or carrot, action needed to be taken. Contracts were signed, and work began on clean closure of existing sites. The incentive in the Rule was to be complete before April 18, 2018 and certain requirements were waived.

On June 14, 2016 the United States Court of Appeals for the D.C. Circuit ordered the vacatur of these “early closure” provisions in 40 CFR 257.100 pursuant to a settlement agreement. EPA’s interpretation of the Order was that all inactive CCR surface impoundments must comply with all of the requirements applicable to existing CCR surface impoundments, including the CCR requirements for groundwater monitoring.

To comply with this Order, and address other issues, EPA issued a direct final rule published August 5, 2016.³ EPA’s direct final rule repealed the provisions exempting inactive surface impoundments from existing surface impoundment criteria and established criteria for siting, monitoring, marking, planning for spills, and other criteria. Separate dates for compliance were established including a requirement for groundwater monitoring before April 17, 2019 for all inactive surface impoundments.⁴

Entities already engaged in (or having completed) clean closure were then left with requirements that made little sense – such as a requirement to perform groundwater monitoring for CCR disposal sites that had already completed clean closure.

Post closure care requirements for these clean-closure sites would continue for 30 years.

¹ See 80 FR 31301, April 17, 2015

² See 80 FR 21408–21409, April 17, 2015; 40 CFR 257.100(b).

³ See 81 FR 51802-51808

⁴ See 81 FR 51806, August 5, 2016; 40 CFR 257.100(e)(5)